

perpendicular plane to the junction of said leading end and said exterior side wall; and

a third distance as measured from the junction of said leading end and said interior side wall to the plane perpendicular to and bisecting the length along the mid-longitudinal axis of said implant that is greater than said second distance.

Please add the following new claim:

--101. The implant of claim 1, further in combination with hydroxyapatite.--

REMARKS

Applicant cancelled claims 43-100, amended claim 1, and added new dependent claim 101 to further define Applicant's claimed invention. Applicant also amended the specification to provide antecedent basis for the subject matter of originally filed claims 36, 37, and 39. No new matter has been added. Support for new dependent claim 101 is found, for example, on page 6, line 3 of the specification. Entry and consideration of the above amendment prior to the examination of the above-identified application is respectfully requested.

Applicant notes that the restriction requirement does not identify any linking claims. Applicant submits that elected independent claim 1 is a linking claim to at least species I and II. MPEP § 809.04 states that "[i]f a linking claim is allowed, the examiner must thereafter examine species if the linking claim is generic thereto, or he or she must examine the claims to the non-elected inventions that are linked to the elected

invention by such allowed linking claim" (page 800-52, col. 2 (August 2001)).

Accordingly, Applicant submits that upon allowance of linking claim 1, at least the non-elected dependent claims 11-13 and 16 drawn to species II must be rejoined and examined under 37 C.F.R. § 1.104 for patentability. Applicant notes that with the cancellation of claims 43-100, independent claim 1 is generic to all the remaining pending claims.

Applicant respectfully objects to the Examiner's proposed cancellation of claims as set forth in paragraph 5 of the Restriction Requirement. 35 U.S.C. § 113 (first sentence) states that the "applicant shall furnish a drawing *where necessary for the understanding of the subject matter to be patented.*" (emphasis added). Applicant submits that certain of the claimed features described in the specification and not illustrated do not require a drawing since the subject matter would be understandable to one of ordinary skill in the art. For example, non-elected claim 39 recites opposed portions that are in moveable relationship to each other. Applicant is providing references in the attached Information Disclosure Statement showing implants with opposed portions in moveable relationship to one another that have been known in the art for over a decade.

Several of the elected claims include a recitation of a material or composition, or a combination of a material or composition which are virtually impossible to distinguish in a figure (see, for example, claim 18). MPEP § 601.01(f) states that situations in which drawings are usually not considered necessary for the understanding of the invention under 35 U.S.C. 113 (first sentence) are: (A) Coated articles or products...[and] (B) Articles made from a particular material or composition..." (page

600-14, column 2 (August 2001)).

It is therefore respectfully requested that the Examiner not cancel any non-elected claim not shown in the drawings.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 50-1066.

Respectfully submitted,

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PATENT
Attorney Docket No. 101.0077-00000
Customer No. 22882

CHANGES TO THE SPECIFICATION

Please amend the specification as follows:

Page 20, paragraph 2:

--Further, the implant of the present invention preferably includes non-arcuate opposed surface portions that are either generally parallel to one another along the length of the implant or in angular relationship to each other such that the opposed surfaces are closer to each other proximate one end of the implant than at the longitudinally opposite other. For example, at least a portion of the opposed surfaces may be in a diverging relationship to each other from the trailing end to the leading end for allowing angulation of the adjacent vertebral bodies relative to each other. Alternatively, at least a portion of the opposed surfaces may be generally in a converging relationship to each other from the trailing end to the leading end for allowing angulation of the adjacent vertebral bodies relative to each other. The spinal implant of the present invention allows for a variable surface, or any other configuration and relationship of the opposed surfaces.--

Page 17, after line 6, insert the following paragraph:

--In another preferred embodiment, the opposed portions of the implant can be in moveable relationship to each other to allow for relative motion of the adjacent vertebral bodies after the implant is installed.--

PATENT
Attorney Docket No. 101.0077-00000
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CHANGES TO THE CLAIMS

Please amend the claim 1 as follows:

1. (Amended) An artificial interbody spinal implant for insertion at least in part across the height of a disc space between adjacent vertebral bodies of a human spine, the vertebral bodies having an anterior aspect and a posterior aspect, said implant comprising:

a leading end for insertion first into the disc space, a trailing end opposite said leading end, and therebetween a length along a mid-longitudinal axis of said implant, said leading end being asymmetrical;

opposed portions between said leading and trailing ends adapted to be placed within the disc space to contact and support the adjacent vertebral bodies, said opposed portions being non-arcuate along at least a portion of the length of said implant, said implant being formed at least in part of a material other than bone, said material comprising at least one of surgical quality titanium and its alloys, cobalt chrome alloy, tantalum, any metal or alloy suitable for the intended purpose, any ceramic material suitable for the intended purpose, and any plastic or composite material suitable for the intended purpose;

an interior facing side wall, an exterior facing side wall opposite said interior side wall, and a width therebetween, said width of said implant being less than approximately one-half of the maximum width of the adjacent vertebral bodies into which said implant is adapted to be inserted, said interior and exterior side walls being between said opposed portions and said leading and trailing

ends, said interior side wall adapted to be oriented toward another implant when inserted within the disc space;

a first distance as measured from said leading end to a plane perpendicular to and bisecting the length along the mid-longitudinal axis of said implant that is greater than a second distance as measured from said perpendicular plane to the junction of said leading end and said exterior side wall; and

a third distance as measured from the junction of said leading end and said interior side wall to ~~a~~ the plane perpendicular to and bisecting the length along the mid-longitudinal axis of said implant that is greater than said second distance.